

**IN UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

NATIONAL CREDIT UNION
ADMINISTRATION BOARD, as
Liquidating Agent of Southwest Corporate
Federal Credit Union and Members United
Corporate Federal Credit Union,

Plaintiff,

v.

CREDIT SUISSE SECURITIES (USA) LLC,
CREDIT SUISSE FIRST BOSTON MORTGAGE
SECURITIES CORP.,

Defendants.

No. 13-cv-6736 (DLC)

**NCUA'S MEMORANDUM REGARDING ITS REDACTIONS
TO SUMMARY JUDGMENT MATERIALS**

On February 5, 2016, NCUA and Defendants Credit Suisse and UBS filed a combined nine motions for summary judgment, along with accompanying materials. Pursuant to the Court's February 1, 2016 Order, ECF No. 226, at 2, the parties initially filed all of those materials under seal; and on February 26, 2016, the parties filed redacted versions of them. On March 3, 2016, the Court ordered the parties to "identify each category of information that they redacted" and the "justification" for such redactions. ECF No. 279, at 1. In sum, NCUA did not redact any information at all related to four of the motions. For the remaining five motions, NCUA made very limited redactions of two categories of information: (1) proprietary business information obtained from Barclays Capital Inc. and BlackRock Financial Management, Inc.; and (2) publicly unavailable personal information regarding non-parties.

1. Most of NCUA's redactions relate to non-party business information, which NCUA redacted based on the requests of third-parties. Barclays, which structured the NCUA Guaranteed

Notes Program (“NGN Program”), requested a number of redactions based on a non-disclosure agreement that it entered into with NCUA in 2010. Those redactions are summarized below.¹

Motion	Document Redacted	Redactions
NCUA’s Damages Motion	Memorandum In Support	Sentences at pages 5, 9, 12, 28, and 31
NCUA’s Damages Motion	Statement of Facts	¶¶ 17, 21, 23, 24, 80, 81, 84, 85, 86, 88, 99
NCUA’s Damages Motion	Exhibit 7	Redacted in full
NCUA’s Damages Motion	Exhibit 11	Redacted in full
NCUA’s Damages Motion	Exhibit 12	Redacted in full
NCUA’s Damages Motion	Exhibit 32	¶ 16(c), ¶ 17(a), Ex. 2, n.48, ¶ 38, ¶ 39, ¶ 40, ¶ 41, ¶ 43, Ex. 7, ¶ 67, Ex. 10, ¶ 69, Ex. 11, ¶ 70, Ex. 12, ¶ 71
NCUA’s Compendium Declaration	Exhibit FF	61:21-25
Defendants’ NGN Motion	Exhibit H	63:16-65:25
Defendants’ NGN Motion	Exhibit O	¶ 12, n.22, n.46, ¶ 32
Defendants’ NGN Motion	Exhibit Q	¶ 11, ¶ 18
Defendants’ NGN Motion	Exhibit T	Redacted in full
Defendants’ NGN Motion	Exhibit U	Redacted in full
Defendants’ NGN Motion	Exhibit V	Redacted in full
Defendants’ NGN Motion	Exhibit W	Redacted in full
Defendants’ NGN Motion / Defendants’ PJI Motion	Exhibit N / Exhibit 51	¶ 37 & n.35, ¶ 39, ¶ 42, ¶ 43, n.48, n.62, ¶ 60 & n.65, n.67, Ex. B3, Ex. B4
Defendants’ PJI Motion	Exhibit 52	¶ 10, ¶ 11, n.13, ¶ 31, ¶ 33, Ex. B3, Ex. B4
Defendants’ PJI Motion	Exhibit 53	¶ 37 & n.35, ¶ 39, ¶ 42, ¶ 43, n.48, n.62, ¶ 60 & n.65, n.67, Ex. B3, Ex. B4
Defendants’ PJI Motion	Exhibit 54	¶ 11, ¶ 12, ¶ 32, ¶ 33, ¶ 35 & n.42, ¶ 36, Ex. B3, Ex. B4
Defendants’ PJI Motion	Exhibit 55	¶ 16(c), ¶ 37, n.51, ¶ 39, ¶ 40, ¶ 41, ¶ 43, Ex. 7, ¶ 52, ¶ 67, Ex. 10, App’x A, Ex. 11, ¶ 70, Ex. 12, ¶ 71, Ex. 13

¹ See *Dodona I, LLC v. Goldman, Sachs & Co.*, 119 F. Supp. 3d 152, 155-56 (S.D.N.Y. 2015) (third parties’ “confidential trade secrets, other proprietary business information, and client identities and trading activity” properly redacted); *Worldwide Home Prods., Inc. v. Bed, Bath & Beyond, Inc.*, No 11-cv-3633, 2015 WL 1573325, at *6 (S.D.N.Y. Apr. 9, 2015) (“confidential third party pricing information” properly redacted); *SOHC, Inc. v. Zentis Sweet Ovations Holding LLC*, 14-cv-2270, 2014 WL 5643683, at *5 (S.D.N.Y. Nov. 4, 2014) (“financial figures and customer information” properly redacted).

NCUA also redacted similar information created by and obtained from BlackRock Financial Management, Inc. in connection with the NGN Program. BlackRock notified NCUA that it would consent to some of the material being publicly filed, but it noted that portions of the documents containing BlackRock's information also contained other entities' proprietary information, which BlackRock had obtained subject to a license. Because NCUA received that notification shortly before the deadline for filing the redacted materials, NCUA redacted all such materials pending additional discussions. In sum, NCUA's existing redactions to the summary judgment materials pertaining to BlackRock are as follows:

Motion	Document Previously Redacted	Initial Redactions
NCUA's Compendium Declaration	Exhibit FF	98:4-100:23
NCUA's Compendium Declaration	Exhibit YY	142:1-144:5
NCUA's Damages Motion	Statement of Facts	¶ 43, ¶ 111, ¶ 112, ¶ 113
NCUA's Damages Motion	Exhibit 21	Redacted in full
NCUA's Damages Motion	Exhibit 22	Redacted in full
NCUA's Damages Motion	Exhibit 27	Redacted in full
NCUA's Damages Motion	Exhibit 28	Redacted in full
NCUA's Damages Motion	Exhibit 29	Redacted in full
NCUA's Damages Motion	Exhibit 31	Redacted in full
NCUA's Damages Motion	Exhibit 32	¶ 10, ¶ 31, Ex. 6, ¶ 36, ¶ 37, ¶ 44, ¶ 45, ¶ 46, Ex. 8, ¶ 52, Ex. 9, ¶ 65 & n.62, Ex. 13, App'x B
Defendants' NGN Motion	Exhibit K	380:10-12; 380:24-381:1
Defendants' NGN Motion	Exhibit O	¶ 11, ¶ 12, ¶ 20 & n.18, ¶ 22 & n.22, nn.24-28, ¶ 23, ¶ 24 & n.32, ¶ 25 & nn.36-39, ¶ 27, ¶ 36 & n.39, Ex. 1, Ex. 2
Defendants' NGN Motion / Defendants' PJI Motion	Exhibit P / Exhibit 49	¶ 27 & n.7, ¶ 29, n.10, ¶ 32, ¶ 34, ¶ 36, ¶ 38, ¶ 39, n.24, Ex. C,
Defendants' NGN Motion	Exhibit Q	¶ 9 n.6, ¶ 13
Defendants' PJI Motion	Exhibit 52	¶ 3, ¶ 15 & n.14, ¶ 17, ¶ 22, ¶ 25 & n.28, ¶ 33 (portion)
Defendants' PJI Motion	Exhibit 54	¶ 3, ¶ 16 & n.19, ¶ 18, ¶ 23, ¶ 26 & n.33

Defendants' PJI Motion	Exhibit 55	¶ 10, ¶ 16(c) (portion), ¶ 17(a), ¶ 18, ¶ 30, ¶ 35 & n.47, ¶ 36, ¶ 37 (portion), ¶ 38, ¶ 44, ¶ 45, ¶ 46, ¶ 63, ¶ 65
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Since the filing of these redactions, NCUA has worked with BlackRock to identify the specific third-party data it requested NCUA not disclose. NCUA was able to narrow its redactions to the following: (1) ratings information provided to BlackRock by a non-party under a licensing agreement, (2) pricing information provided to BlackRock by a non-party under a licensing agreement and data from which that information could be reverse engineered, and (3) proprietary information regarding mortgage loans underlying certain securities provided to BlackRock by a non-party under a licensing agreement.² Accordingly, NCUA is prepared to file revised redactions related to BlackRock that are limited to the following:

Motion	Document Redacted	Redactions
NCUA's Damages Motion	Exhibit 21	Columns I, J, K, N, O
NCUA's Damages Motion	Exhibit 22	Tab "NCUA-NGN-U" columns K, L, M, P, Q, R; Tab "NCUA-AME- CMBSSurveillance" columns R, S, T, U-BK; Tab "NCUA- AME-RMBSSurveillance" columns O, P, Q, R-CU
NCUA's Damages Motion	Exhibit 27	Charts at NCUA_A_0001674 and NCUA_A_0001675
NCUA's Damages Motion	Exhibit 28	Columns K, L, M, P

² Those redactions seek to protect the business information of entities not involved in this litigation. *See Dodona I*, 119 F. Supp. 3d at 155-56; *Worldwide Home Prods.*, 2015 WL 1573325, at *6; *SOHC*, 2014 WL 5643683, at *5.

NCUA's Damages Motion	Exhibit 29	Tab "NCUA-NGN-U-3312011" columns K, L, M, P; Tab "NCUA-AME-U-3312011" columns K, L, M, P; Tab "NCUA-NGN-U-6302011" columns I, J, K, N, O; Tab "NCUA-AME-U-6302011" columns I, J, K, N, O
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2. As to a single exhibit pertaining to one summary judgment motion, NCUA has redacted personal information of non-parties that NCUA made reasonable efforts to determine are non-public. In Exhibit 10 to Defendants' Motion for Partial Summary Judgment on Members United's Failure to Comply with the Notice Provision of the Illinois Blue Sky Law, NCUA redacted only non-party individuals' phone numbers, email addresses, and grade-point averages. *See Exhibit 10 at 15-16.* NCUA did so only after confirming that that information was not otherwise publicly available on the Internet. NCUA's proposed redactions are therefore "narrowly tailored," *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006), and properly seek to protect "[t]he privacy interests of innocent third parties," which the Second Circuit has explained "should weigh heavily in a court's balancing equation." *United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995); *see also Pal v. New York Univ.*, No. 06-cv-5892, 2010 WL 2158283, at *1 (S.D.N.Y. May 27, 2010) (approving redaction of "confidential and sensitive patient information" but limiting such redactions to "information identifying the patients"). NCUA also redacted one page of deposition testimony in Exhibit WW to NCUA's Compendium Declaration for similar reasons, but upon additional consideration is prepared to file an unredacted version of that page. Finally, NCUA mistakenly made redactions to Exhibit FF to its Compendium Declaration and is prepared to file an unredacted version of that exhibit.

CONCLUSION

NCUA respectfully submits that its initial redactions were appropriate. After further review, NCUA respectfully asks that it be permitted to maintain the more limited redactions set forth above. NCUA will await the direction of the Court concerning appropriate redactions and will implement that direction in coordination with the other parties.

Date: March 7, 2016

Respectfully submitted,

/s/ David C. Frederick

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